S.B.CIVIL MISC. APPEAL NO.839/2005

Hajari Mal
vs.
Bheru Lal and others.

DATE OF JUDGMENT ::: 10.2.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. R Hedau, for the appellant.

Mr. S Acharya) for the respondent.
Mr. Pradeep Shah)

- - - - -

At the request of learned counsel for the parties, the appeal is heard finally.

The plaintiff's case is that the respondent no.1 through his power of attorney – respondent no.2 agreed to sale the plot in dispute to the plaintiff/appellant for which an agreement was executed on 29.6.2004 by the respondent no.2 on behalf of the respondent no.1. The plaintiff paid Rs.80,000/- and also took possession of the plot in dispute. The power of attorney in favour of the respondent no.2 is registered one.

According to learned counsel for the appellant, in view of the fact that the appellant has paid the cost of the land and took the possession of the plot in dispute, therefore, during the pendency of the suit, neither the respondent no.1 can dispossess the appellant from the land

in dispute nor he can sale the property to any other person. According to learned counsel for the appellant, the trial court dismissed the appellant's application for grant of injunction on hypertechnical ground of having no separate receipt of payment of Rs.80,000/-. It is also submitted that the property in dispute is an open piece of land, therefore, during pendency of the plaintiff's suit, the defendant has no right to deal with the property in dispute.

Learned counsel for the respondent submits that the trial court rightly dismissed the injunction application of the appellant and the appellant is owner of the property, therefore, no injunction can be granted against the appellant.

I considered the submissions of learned counsel for the parties and perused the facts of the case.

It appears that the power of attorney is a registered one and the plaintiff has come with a case that he entered into an agreement for purchase of the land in dispute. Admittedly, the plot in dispute is an open piece of land where in the facts and circumstances of the case, no one can be allowed to raise construction, therefore, both the parties are directed to maintain status quo. Otherwise, if the position will be altered by any party during pendency of the suit, that may cause hardship to the other party. So far as actual physical possession is concerned, the matter

can be well examined during the trial of the suit. But looking to the nature of the property, it will be proper to preserve the property as it is during the pendency of the suit. The respondent no.1 has also no authority to sale the plot in dispute when the litigation is pending for specific performance of the contract because it will result into involving third party's right in property when the plaintiff is seeking transfer of title through the Court.

In view of the above, prima-facie case appears to be in favour of the plaintiff and in case, injunction is not granted, the appellant will suffer irreparable injury and the balance of convenience is also in granting the injunction rather than refusing it.

Accordingly, this appeal deserves to be allowed, hence, allowed, the order dated 28.4.2005 is set aside and both the parties are directed to maintain status quo with respect to the property in dispute and the respondent no.1 shall not sell the property in dispute to any body, during the pendency of the suit.

(PRAKASH TATIA), J.

S.Phophaliya